

Application No. 09/945,200

Amendment dated Sep. 21, 2005

In Reply to Office Action of Jun. 21, 2005

REMARKS

Claims 1-6, 8-15, 17-21 and 25-33 are pending in the application.

Applicant respectfully notes that the Office Action was sent to the incorrect correspondence address (i.e., to Kevin J. Zimmer of Cooley Godward LLP).

Applicant respectfully draws the attention of the Examiner to the letter dated September 9, 2004 and entitled "Power of Attorney By Assignee of Entire Interest, Revocation Of Prior Powers And Change of Correspondence Address". According to our return-receipt postcard, the letter was received by the U.S. Patent and Trademark Office on September 13, 2004. In addition to revocation of all previous powers of attorney, the letter states, in the "Change of Correspondence Address" section, that correspondence should be directed to:

**Christopher C. Winslade
McAndrews, Held & Malloy
500 W. Madison Street
Suite 3400
Chicago, IL 60661**

Applicant respectfully requests that future correspondence be sent to Christopher C. Winslade of McAndrews, Held & Malloy.

Claim 1 was objected to due to a noted informality. Claim 1 has been amended to correct the noted informality. It is respectfully requested that the objection be withdrawn with respect to claim 1.

Claims 1-6, 8-15, 17-21 and 25-33 stand rejected under 35 U.S.C. § 103(a) as being anticipated by U.S. Patent Publication No. 2002/0187799 A1 ("Haartsen") in view of U.S. Patent Publication No. 2002/0034172 A1 ("Ho") and further in view of the application's allegedly disclosed prior art. Applicant respectfully traverses the rejection as set forth below.

Claim 1 recites, in part, wherein an access code portion of outgoing transmissions sent by the wireless communications device is reserved to notify a second wireless communications device that the outgoing transmissions have an increased level of error-correcting coding.

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Ho teaches away from an access code portion being reserved to notify a second wireless communications device that the outgoing transmissions have an increased level of error-correcting coding. For example, Ho specifically teaches that "[t]he Access Code field 102 is used for synchronization and DC offset compensation". Ho at paragraph [0020]. Thus Ho teaches away from the use of the access code portion as set forth in claim 1. In addition, Ho specifically teaches in Figures 1A and 1B that the Access Code field 102 is separate and different from the PHY header 104 which carries an FEC field 114. Thus, the forward error correcting field 114 is taught to be part of the PHY header 104 and teaches away from the forward error correcting field 114 being part of the Access Code field 102.

Haartsen teaches away from notifying a second wireless communications device that the outgoing transmissions have an increased level of error-correcting coding. Haartsen at paragraph [0017] states that the performance parameter of the communication channel is measured at the second wireless communications device. Thus, there is no need to notify the second wireless communications device since the second wireless communications device is the first to know about, for example, the performance parameter of the communication channel.

The application's allegedly disclosed prior art also teaches away from an access code portion being reserved to notify a second wireless communications device that the outgoing transmissions have an increased level of error-correcting coding. The Office Action cites the present application at paragraph [1027] which includes statements such as "[a]ccording to the Bluetooth specification". However, the Bluetooth specification teaches away from an access code portion being reserved to notify a second wireless communications device that the outgoing transmission have an increased level of error-correcting coding. Applicant respectfully submits that the Bluetooth specification teaches an access code portion without notification of an increased level of error-correcting coding.

Applicant respectfully submits that Haartsen, Ho and the application's allegedly disclosed prior art teach away from the claimed invention as set forth in claim 1. Teaching away from the claimed invention is a "significant factor" in determining obviousness according to M.P.E.P. § 2145(X)(D)(1).

Applicant respectfully submits that, if the application's allegedly disclosed prior art teaches a DIAC containing an FEC value (as alleged in the Office Action and disputed by

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Applicant), then Haartsen and Ho teach away from the application's allegedly disclosed prior art for the reasons stated above. It is respectfully submitted that Haartsen and Ho cannot be combined with application's allegedly disclosed prior art teach away from each other. See, e.g., M.P.E.P. § 2145(X)(D)(2) ("[i]t is improper to combine references where the references teach away from their combination").

Applicant respectfully submits that Ho and the application's allegedly disclosed prior art are modifying Haartsen so that a second wireless device can be notified of an increased level of error-correcting coding. However, such efforts are not necessary in Haartsen, since Haartsen teaches, for example, that the performance parameter of the communication channel is measured at the second wireless communications device. Thus, there is no need to notify the second wireless communications device since the second wireless communications device is the first to know about, for example, the performance parameter of the communication channel.

Applicant respectfully submits that, just because DLACs tolerate a higher bit error rate than a body of a message does not suggest reserving an access portion to notify a second wireless communications device that the outgoing transmissions have an increased level of error-correcting coding. Applicant respectfully submits that, without impermissible hindsight of the claimed invention, one of ordinary skill in the art would have continued to place FEC information in the PHY header (which is not part of the body of the message) as taught in Ho (which presumably is a tangible example of the knowledge of one of ordinary skill in the art) and not in an access code portion as alleged in the Office Action.

Furthermore, Applicant respectfully submits that there is no teaching in any of the cited documents of *reserving* an access portion to notify of an *increased* level of error-correcting coding. It is therefore respectfully submitted that a *prima facie* case of obviousness has not been presented.

For at least the above reasons, the obviousness rejection cannot be maintained. It is therefore respectfully requested that the obviousness rejection be withdrawn with respect to claim 1 and its dependent claims (i.e., claims 2-6 and 8-11).

Claim 12 recites, in part, notifying the recipient device that following data will contain enhanced error-correcting coding, said notifying comprising reserving an access code portion of the transmission for the notification of enhanced error-correcting coding.

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Applicant respectfully submits that many of the arguments made with respect to claim 1 can be made, with appropriate modification, with respect to claim 12. It is therefore respectfully requested that the obviousness rejection be withdrawn with respect to claim 12 and its dependent claims (i.e., claims 13-15 and 17-20).

Claim 21 recites, in part, a second code segment for generating a notification for transmission to the recipient device that the message will contain enhanced error-correcting coding, wherein the message is a data packet comprising an access code portion, a header portion and a payload portion, and wherein a dedicated inquiry access code portion is appended to a beginning portion of the access code portion.

Applicant respectfully submits that many of the arguments made with respect to claim 1 can be made, with appropriate modification, with respect to claim 21. In addition, Applicant respectfully submits that none of the cited documents, individually or combined, teaches *appending* to a *beginning* portion of an access code portion a dedicated inquiry access code as set forth in claim 21. It is therefore respectfully requested that the obviousness rejection be withdrawn with respect to claim 21 and its dependent claims (i.e., claims 24-26).

Claim 27 recites, in part, wherein a dedicated inquiry access code portion of transmitted data is reserved to identify the recipient device and notify the recipient device of the second error correction code when it is utilized by the wireless device.

Applicant respectfully submits that many of the arguments made with respect to claim 1 can be made, with appropriate modification, with respect to claim 27. It is therefore respectfully requested that the obviousness rejection be withdrawn with respect to claim 27 and its dependent claims (i.e., claims 28 and 29).

Claim 30 recites, in part, wherein a dedicated inquiry access code portion of transmitted data is reserved to identify the second wireless device and notify the second wireless device of the second error correction code when it is utilized by the first wireless device.

Applicant respectfully submits that many of the arguments made with respect to claim 1 can be made, with appropriate modification, with respect to claim 30. It is therefore respectfully requested that the obviousness rejection be withdrawn with respect to claim 30 and its dependent claims (i.e., claims 31-33).

FROM McANDREWS, HELD, & MALLOY


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The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: September 21, 2005

Respectfully submitted,



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